THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.12287 of 2005

Date : 8-9-2006

Between:

L.M.Laxman Murthy s/o.late L.M.Swamy,
Aged 47 years, occ: Service, R/o.H.No.
1-8-702/27, Padma Colony, Nallakunta,
Hyderabad. ..
Petitioner

And

1. The Municipal Corporation of Hyderabad,
   represented by its Commissioner, Tank
   Bund road, Hyderabad.
2. The Assistant Commissioner, Municipal
   Corporation of Hyderabad (Projects),
   Tank Bund Road,
   Hyderabad.
3. Padma Colony Housing Co-operative
   Society, rep. by its President,
   Madhur Narayan s/o.Not known,
   Aged about 75 years, occ: Business,
   R/o.1-8-702/41, Padma Colony,
   Nallakunta, Hyderabad. ..
Respondents

THE HON'BLE SRI JUSTICE P.S. NARAYANA

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ORDER:

1. Heard Sri V.Ravi Kiran Rao, the learned Counsel representing the petitioner and Sri Ganta Rama Rao, learned Standing Counsel representing respondents 1 and 2 and Sri J.Prabhakar, the learned Counsel representing the 3rd respondent.

2. Sri Ravi Kiran Rao, the learned Counsel representing the petitioner would submit that respondents 1 and 2 are taking steps to the space earmarked for children's park in Padma colony lay out which was approved by the Municipal Corporation of Hyderabad way back in the year 1961. The learned Counsel also would submit that the ecological balance to be maintained and if the community hall is constructed in the place earmarked for children's park it would not be in the public interest of the locality. The learned Counsel also had taken this Court through the contents of the affidavit filed in support of the writ petition and also the contents of the respective

counter affidavits and the reply affidavit filed in this regard and would submit that in the interest of public unless the Municipal Corporation of Hyderabad clarifies the actual extent in which the constructions are being raised it would cause inconvenience to be public of the locality.

3. Per contra Sri Ganta Rama Rao would maintain that one Siddeswar of the same locality filed a writ petition on similar lines and the same was disposed of. The said Siddeswar also at present is a consenting party and the self same grounds are being raised by the present writ petitioner. The learned Counsel also had taken this Court through the contents of the counter affidavit filed by respondents 1 and 2 and would maintain that in the light of the clear and specific stand taken by these respondents at para-7, inasmuch as respondents 1 and 2 also are interested in maintaining the children's park and protecting the interest of the public, no further specific orders need be passed in the present Writ Petition.

4. Sri J.Prabhakar, the learned Counsel representing the 3rd respondent had taken this Court through the counter affidavit filed by the 3rd respondent and would submit that specific measurements in which the construction had been raised had been given and no further constructions are being raised except replacing the

prior constructions. The learned Counsel also would submit that in fact pillars had been raised and on these pillars only further constructions would be proceeded with. The Counsel also would submit that inasmuch as he is representing the Padma Colony Housing Co-operative Society, represented by the President as such, the Society also is equally interested in maintaining the children's park and also to maintain the ecological balance, health, environment and the other aspects as well.

5. Heard the Counsel on record.

6. The Writ Petition is filed for a Writ of Mandamus directing the respondents not to take any steps for children's park in Padma colony lay out which was approved by the Municipal Corporation of Hyderabad itself in the year 1961 and to develop the same as a children's park to maintain the ecological balance and lung space to the inhabitants of Padma colony, Nallakunta, Hyderabad by duly declaring the action of the respondents in taking steps for construction of a community hall in a place which was earmarked for children's park in the approved lay out of Padma colony Housing Co-operative Society, Nallakunta, Hyderabad as illegal, arbitrary, violative of Article 21 of the Constitution of India and also contrary to the lay out approved by the

Municipal Corporation of Hyderabad in respect of the Society on the application filed by the 3rd respondent society and also contrary to the well settled principles laid down holding that the authorities have no right to do away with the space earmarked for the said purpose and to pass such other suitable orders.

7. It is stated that the petitioner is the owner of the house in the name of his mother i.e., house bearing No.1-8-702/27 in Padma colony Housing Co-operative Society, Nallakunta, Hyderabad. It is further stated that in the year 1961 a housing society was registered under the provisions of the Societies Act in the name and style of 'Padma Colony Housing Co-operative Society' for providing residential houses to its members. In that connection, property was acquired by the said society and approached the Municipal Corporation of Hyderabad for sanction of lay out. The Municipal Corporation of Hyderabad had approved the lay out of the said society in the year 1961 vide Sy.Nos.56 and 57, Document No.1175 of 1961, dated 12-4-1961. As per the said lay out, two parks were earmarked to maintain ecological balance and also for providing some lunge space to the inhabitants of that colony and the society had allotted plots to the members of the society. The members of the society had

constructed their residential houses in their respective plots which were allotted to them by the society in accordance with the plan sanctioned by the Municipal Corporation of Hyderabad. It is further stated that the mother of the petitioner was allotted plot Nos.43 and 44 which are just located adjacent to the space which was earmarked for the children's park. After construction of the residential houses in that area, the colony was named as “Padma Colony”. It is also stated that while the matters stood thus in the year 1998 some of the office bearers of the society i.e., Padma Colony Housing Co-operative Society without any authority under law intended to make construction of a community hall in the land which was earmarked for the park in the lay out sanctioned by the Municipal Corporation of Hyderabad. However some of the residents of the colony opposed the steps taken for construction of the community hall during Janmabhoomi Programme with the active support of Municipal Corporation of Hyderabad. At that time one Mr.G.Siddeswar and others who are residents of Padma colony had approached this Hon’ble Court and filed W.P.No.17115/1998 against the 1st respondent herein questioning the action of the Municipal Corporation of Hyderabad for utilizing the children's park in the colony for

the purpose of construction of community hall. In the said Writ Petition the petitioners had sought the main relief for invalidation of the action of the Municipal Corporation of Hyderabad i.e., converting the children's park to that of community hall. In the said writ petition an interim order was passed directing the Municipal Corporation of Hyderabad to maintain status-quo as on that date with regard to conversion of children's park into community hall pending further orders. After filing counter the matter came up before this Hon'ble Court and this Hon'ble Court by an order dated 26-3-2002 disposed of the above writ petition and the operative portion of the order reads as follows:

> "After hearing the learned Counsel for the petitioner and the learned Standing Counsel for Municipal Corporation of Hyderabad, this Court is of the opinion that the respondent-Corporation should reconsider the representation made by the petitioner on 22-5-1998 keeping in view the judgments of this Court in N.G.Os. colony Development Committee Vs. District Collector, Machilpatnam, Sri Balaji Park Residents Welfare Association Vs. Vice-Chairman, VUDA and Venkateswarulu Vs. Government of Andhra Pradesh."

It is further stated that on enquiry the petitioner came to know that the 1st respondent herein never bothered to

dispose the representation dated 22-5-1998 filed by the petitioners in the said writ petition. Unfortunately the petitioners in the writ petition had also not taken any steps for complying the said order for the reasons best known to them. It is further stated that after disposal of the above said writ petition, once again some of the members of the 3rd respondent society appears to have approached the then Member of Parliament of Secunderabad Constituency and sought release of some funds from M.P. funds which were allocated to him. It appears the Member of Parliament had allocated certain funds to take up developmental activities by the society for the benefit of inhabitants of the colony. In stead of developing a park which was earmarked in the approved lay out of the colony, some of the members of the society intended to make construction of community hall in the land which was earmarked for the park. As a matter of fact some of the residents of the colony made hue and contrary against the steps taken by the members of the society i.e., construction of community hall. On enquiry the petitioner came to know that the members had not appraised correct facts to the Member of Parliament while seeking release of funds from M.P. funds. Immediately some of the residents of the colony including the mother of the

petitioner made a representation dated 18-3-2004 to the 1st respondent and the same was received by the office of the 1st respondent on 20-3-2004. In the said representation, it was made clear that a Judgment was rendered by the Hon'ble High Court in W.P.No.17115/1998 dated 26-3-2002 in this regard, but no action was taken by the 1st respondent to safeguard the interest of the inhabitants of the colony. In contra, the M.C.H. in order to please the Executive body of the society had taken up the construction activity in the space which was earmarked for the park in the approved lay out. When the staff engaged by the Corporation started digging the land, immediately the petitioner and the other members had once again approached the 1st respondent and filed representation on 6-6-2005. In the said representation the 1st respondent was specifically requested to examine the matter carefully after perusing the Hon'ble High Court's order and also requested to take steps immediately to stop the construction of the community hall in the land which was earmarked for the children's park in the lay out. The said representation was received by the 1st respondent on the same day. Even after receipt of the above said representation, the 1st

respondent did not take any steps except saying that the 2nd respondent would look into the matter and would take a decision. Till today neither the 1st respondent nor the 2nd respondent had not taken any steps in response to the representation dated 6-6-2005 filed by the petitioner and others to stop the construction activity i.e., construction of community hall in the land which was earmarked for the children's park in the lay out. It is further stated that Section 586 of the Hyderabad Municipal Corporation Act 1955 clearly envisages that the Corporation from time to time make Bye-laws not inconsistent with the Act in respect of several matters including “securing the protection of public parks, gardens, public parking places and open spaces vested in or under the control of the Corporation from injury or misuse, regulating their management and the manner in which they may be used by the public and providing for the proper behaviour of persons in them”. Further, the Municipal Corporation of Hyderabad Lay out Rules 1965 clearly say that certain spaces should be earmarked for the public purpose i.e., roads, parks, play grounds, parking places etc., for seeking approval of the layout. It is further stated that the layout was approved by the Municipal Corporation of Hyderabad after the society

earmarked certain spaces for public purposes. It is further stated that about 800 to 1000 sq.yards was earmarked for children's park in the lay out of Padma colony. It is also stated that it is well settled that the community requires certain lung space. Apart from that the parks and wet lands are also necessary for the purpose of maintaining ecological balance. It is further stated that the doctrine of public trust applies in relation to park wherefor the open space is earmarked for the purpose of park and it becomes the statutory duty of the local authorities and other statutory bodies to maintain the same. Though there is no revision of layout which was sanctioned in the year 1961 in respect of Padma colony, the Municipal Corporation of Hyderabad now in stead of developing the same into park, started making construction of community hall to please some of the members of the society with the funds which were allocated by the then M.P. Sri Bandaru Dattatreya. It is also further stated that in a catena of decisions, the High Court and the Supreme Court held that once the land is earmarked in the lay out for a particular purpose the same cannot be converted against the public interest. It is also stated that as on 9-6-2005 some labourers started construction activities at the site under the supervision of the authorities of the Municipal Corporation of Hyderabad with an intention to complete

the same as early as possible. In such circumstances, the writ petitioner had moved this Court.

8. This Court granted interim order in W.P.M.P.No.15635/2005 and an application to vacate the interim order i.e., W.V.M.P.No.2006/2005 was filed by the 1st respondent. Respondents 1 and 2 also filed counter affidavit. A reply affidavit in detail also had been filed. In the counter affidavit filed by the respondents 1 and 2 almost all the allegations were denied and specific stand was taken that previously a community hall was constructed in the part of the open space nearly 30 years back and the same was utilised for various purposes including conducting of elections, property tax collection center, vaccination center, electoral registration center and various other public purposes for the common benefits of the residents of the locality. Specific stand was taken that it is not in dispute about the provision of two parks in the layout and it is stated that as on today there are two parks developed by the Corporation in two different places in Padma colony and apart from the said two parks in the present place which is earmarked as an open space, a community hall was constructed nearly 30 years back and the said community hall constructed without pillars is in a dilapidated condition. It is stated that

the 3rd respondent society appears to have approached the Hon'ble Member of Parliament, Secunderabad for allotment of funds and the Hon'ble Member of Parliament, Secunderabad was pleased to allot an amount of Rs.10 lakhs from the M.P. Funds for construction of a community hall to be utilised for various purposes for the benefit of the local people. Accordingly it was approved to construct a R.C.C. building by demolishing the existing old structure which is in a dilapidated condition. It is also averred in para-4 that it is a fact that previously one Siddeswar filed W.P.No.17115/98 and this Court was pleased to dispose of the said representation by an order dated 26-3-2002 directing the Corporation to consider the representation made by the petitioner therein on 22-5-1998 keeping in view the Judgments of this Hon'ble Court. It is also stated that already there are two parks developed by the respondent-Corporation in the said layout and the community hall is sought to be constructed presently in the same place by demolishing the old existing structure which is in a dilapidated condition. In fact, the remaining available vacant land after construction of the community hall is also sought to be developed as a park. It is further stated that the present community hall is sought to be constructed for benefit of the residents of the locality and

the decision was taken to construct the present community hall after considering the report submitted by the said Siddeswar and taking into consideration various facts especially considering the fact that already there is an existing structure at the place where the present community hall is sought to be constructed. Specific stand was taken in para-7 that it was proposed to construct a community hall by demolishing the existing structure and no building is sought to be constructed in the area other than the area on which already the building had been in existence since 30 years. Several other facts had been narrated and further it is stated that even Siddeswar who filed the previous writ petition had also consented for construction of the community hall after appraising the situation.

9. In the counter affidavit filed by the 3rd respondent almost similar contentions and averments made in the counter affidavit of respondents 1 and 2 had been repeated. It is also further averred at para 10 that insofar as the present space is concerned the area measures 574.75 sq.yards and a apart from small community hall in an area of 107 sq. yards around this community hall, the remaining area of 467.75 sq. yards is open area. The said hall was constructed originally in the

year 1982. It is also averred that ever since 1982 various activities of the society had been carried out. It is also averred that the community hall was having a tin roof and a library, recreation room, yoga classes for all the residents and classical music and kuchipudi dance classes for the children who are residing in the Padma colony is being run. In addition to that the ladies of the colony had been running their association activities in the name of Padma Mahila Abhudaya Mandali and another association by the young ladies in the name and style of Progressive Young Ladies Association (PYLA) is also being run. Similarly there is another association by name Progressive Young Men's Association (PYMA). Even senior citizens of the colony are attending Geeta Parayanam every day from 6 AM to 8 AM. All these associations have been smoothly running their activities for all these years. However as the roof of the community hall is of tin and is in a dilapidated condition it was decided to replace the same. The Engineers opined that the present walls may not be in a position to bear the load of R.C.C. roof and therefore on the advice of the engineers it was decided to demolish the entire building and reconstruct the entire building with the same dimension. It is also averred in para-11 that the community hall is existing since long. This is a regular polling booth for

every election held after 1982. In the recent Parliament/Assembly General Elections also, two polling booth Nos.145 and 145-A had been allotted in this community hall. Medical camps like distribution of free polio vaccine etc., are also being organised. The Police Department also conducts regular peace committee and Maithri Sangham meetings of Police Department. Ganesh Utsav during Ganesh Chaturdhi and Durga Pooja during Dasara are also being performed. Thus a specific stand is taken that the place is being utilized by all the residents of the colony for the common welfare programmes. It is further averred in para-12 that the petitioner suppressed the fact that there was a building in existence since the last several years. It is further averred that the 3rd respondent society had passed a resolution on 13-3-2005 wherein the members unanimously resolved to construct a community hall by demolishing the existing one in the same extent and develop the park in the remaining area. It is further averred that when Sri Bandaru Dattatreya was the Member of Parliament for Secunderabad Constituency, he granted Rs.10 lakhs out of his funds for construction of community hall on being personally satisfied about the dilapidated condition of the existing hall and the said amount is already lying with the M.C.H. and

therefore it was decided to request the M.C.H. to release the funds for construction of the hall I the same extent of area where the previous dilapidated community hall was in existence. It is averred that the children and elders of the colony were regularly carrying out their activities in the hall. The hall had become very old and the roof is virtually leaking during rainy season. It became unsafe for the children and elderly people to stay in the hall. Therefore the colony people felt a genuine need to have a place for their activities wherein they can carry out their activities safely. It is for this reason that as the building became uninhabitable and dangerous it was decided to demolish the same and construct a new one, however, without any further extension. It is also further averred that even now the community hall is sought to be constructed strictly in the same area and extent. It is further averred that insofar as the remaining open land adjoining the present land is concerned, the same will be developed into a park notwithstanding the fact that there never existed a park in this area at any point of time, as it would be more convenient for elderly people and the kids. It is also averred that besides this, two parks are already in existence in the colony. The M.C.H. already demolished the existing building and started re-construction and the construction of basement had been completed and pillars

also had been raised and if at this stage the construction is stopped, the society and the residents of the colony will suffer irreparable loss and injury. The writ petitioner who was watching the proceedings is fully aware of the resolution of the executive body but he did not raise any objection at that point of time and the writ petition is liable to be dismissed on this ground. The petitioner who had not chosen to leave even an inch of lung space for his house is speaking of lung space in respect of the colony. It is further averred that after completion of the construction of the building, there is a proposal of the have a park all around the community hall. It is not uncommon to have a small construction for the welfare of the residents even inside the park and this will be found in every colony. The place in question was not earmarked for park and it is only a stray piece of land left out during laying out of the plots. Nonetheless, for the advantage of the locality people, recreation and convenience, a park all along the construction which would benefit all the residents of the colony a park was thought of. It is further averred that the M.C.H. also had planned for the same and a letter also was given by the society in this regard. It is further averred that the resolution also clearly sets out the above stated facts. Further the society in the very

same resolution adopted that the hall will not be used for any commercial purpose nor let out to any individual for functions like marriages, receptions, birthdays etc. and it would be purely for community purpose alone. A true copy of the extract of the resolution dated 13-3-2005 passed by the society is filed. The petitioner had not approached the Hon'ble Court with clean hands. The writ petitioner acquiesced of the construction all through though he is residing across the road. The petitioner has no locus standi to file the writ petition as admittedly he is not the owner of any property/house in Padma Colony as on date. The building in which the petitioner is residing was constructed in gross violation of the building regulations and bye-laws and therefore he is not entitled to seek the relief in the present writ petition. It is further averred that the petitioner is only trying to harass the residents of the colony and blackmail them with unreasonable demands and is also demanding to have the society managing committee members of his choice which the office bearers of the society are not in a position to fulfill. As a counterblast, the present Writ petition is filed with a mala fide intention and oblique motive. It is averred in para-13 that except the earlier existing community hall, there is no other community hall in the entire colony. Though the said community hall was in existence right

from the year 1982 till it was demolished by the M.C.H. very recently, the petitioner had never raised any objection either at the time of its construction or subsequently at any point of time. Since the society intends to make constructions of community hall interest same place and extent, the petitioner is estopped from raising objections for its re-construction at this juncture. The society intends to develop the surrounding place of the community hall for park only, although no park existed there previously. It is further averred that insofar as the decisions set out in para-7 of the affidavit are concerned, the same do not have any application in the light of the facts of this particular case. The ratio laid down in any case would have to be examined in the backdrop of the factual matrix. It is for this reason that the decisions referred to by the petitioner have no application to the present case.

10. A reply affidavit is filed again narrating several details and reiterating the same objections which had been raised in the affidavit filed in support of the Writ Petition and also raising further objections. The detailed reply affidavit which runs into several paragraphs narrated several factual details in paras 3 to 17. In substance the objection taken is that inasmuch as this area is specifically

earmarked for a particular purpose i.e., children's park, the same cannot be utilised for a different purpose. There cannot be any two different opinions relating to this aspect. When a particular place is earmarked for a particular purpose, i.e., for the purpose of children park or park, as the case may be, the same may have to be utilised for the self-same purpose. But on consideration of the respective stands taken by the parties, especially the specific stand taken in the counter affidavit of respondents 1 and 2 coupled with the further stand taken by the 3rd respondent, it is clear that the proposed construction is not being taken up for the first time. There had been a community hall and since virtually it became dilapidated, by making a request and by raising certain funds most probably the local public and also the Municipal Corporation of Hyderabad/respondents 1 and 2, thought of reconstructing the same. In the light of the specific stand taken, this Court trusts that the main object of earmarking the place in question for the children's park or park as the case may be, would not be defeated since clear stand had been taken both by 3rd respondent and also by respondents 1 and 2 that no other further construction would be made except the construction which had been already in existence and replacing the

said construction by proceeding with the present construction. The specific stands taken by the respective parties are hereby recorded. The 3rd respondent also had taken a stand representing the society that the 3rd respondent in a way is also interested in keeping the public interest i.e., maintaining the children's park or park, as the case may be. The same is hereby recorded. The respondents 1 and 2 had taken a stand that they are interested in seeing the children's park or park also is maintained. To substantiate their contentions, some material papers also had been filed by the parties. In the light of the stands taken by the respective parties, this Court is of the considered opinion that the Writ Petition can be disposed of with the following directions:

The respondents 1 and 2 to proceed with further construction in the place in which the prior construction had been in existence and not to encroach upon the other space left over and also to see that no such obstruction would be caused for the maintenance of the children's park or park, as the case may be, for which space in question had been initially earmarked. It is made clear that the principal object of maintenance of the children's park or park, as the case may be, to be kept in mind while proceeding with further constructions. This Court trusts

and hopes that in the light of the specific stands taken by respondents 1 and 2 and also the 3rd respondent, the respondents would not deviate from the same and see that a balance is maintained i.e., protecting the public interest by constructing the community hall and also protecting the principal object of maintenance of children's park or park as the case may be, as well.

11. The Writ Petition is accordingly disposed of. No order as to costs.

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Justice

P.S.Narayana

Date : 8-9-2006

L.R. copy to be marked : YES / NO

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